

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

UNITED STATES OF AMERICA,) CRIMINAL NO. 1:19-mj-04532-DHH-1
Plaintiff,)
) BOSTON, MASSACHUSETTS
v.) DECEMBER 11, 2019
)
ZAOSONG ZHENG,)
Defendant.)
)

TRANSCRIPT OF INITIAL APPEARANCE
BEFORE THE HONORABLE DAVID H. HENNESSY
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Government: UNITED STATES ATTORNEY'S OFFICE
BY: Benjamin Tolkoff, AUSA
One Courthouse Way, Suite 9200
Boston, MA 02210
617-748-3183
benjamin.tolkoff@usdoj.gov

For the Defendant: Brendan O. Kelley, Esq.
Federal Defenders Office
51 Sleeper Street, 5th Flr.
Boston, MA 02210
617-223-8061
brendan_kelley@fd.org

Court Reporter:

Proceedings recorded by electronic sound recording,
transcript produced by transcription service.

1 COURT CALLED INTO SESSION

2 (2:48:05 P.M.)

3 THE CLERK: The U.S. District Court for the
4 District of Massachusetts is in session, the Honorable David
5 Hennessy presiding. You may be seated.

6 Today is December 11, 2019. We are on the record
7 in the matter of the United States vs. Zaosong Zheng, Docket
8 19-mj-04532.

9 And I'll swear in the interpreter, please.

10 GOVERNMENT INTERPRETER SWORN

11 THE CLERK: And can you please state and spell
12 your name for the record?

13 THE INTERPRETER: Good afternoon, Your Honor. For
14 the record, my name is Melissa Lo, last name L-O, and I will
15 interpreting in Chinese Mandarin.

16 THE COURT: Good afternoon.

17 Want to note your appearance?

18 MR. TOLKOFF: Your Honor, good afternoon. Ben
19 Tolkoff for the United States.

20 THE COURT: Good afternoon.

21 MR. KELLEY: Good afternoon, Your Honor. Brendan
22 Kelley with the Federal Defender's Office for Mr. Zheng.

23 THE COURT: Good afternoon.

24 Mr. Zheng, I'm Magistrate Judge Hennessy. You're
25 here because a criminal complaint has been filed charging

*Judy Bond, CERT
Certified Federal Court Transcriber
judy@bondcourtreporting.com*

1 you with a crime in violation of federal law.

2 This hearing is known as an initial appearance. I
3 will advise you of your constitutional and legal rights. I
4 will tell you about the charge against you and the penalties
5 that can be imposed if you're found guilty of that charge.
6 I'll consider whether you need us to appoint counsel for
7 you, whether you're going to be released or detained, and if
8 necessary, I'll set a date for your next court appearance.

9 This is not a trial, and you will not be asked to
10 comment on the charge.

11 You are charged in the criminal complaint with
12 making false, fictitious or fraudulent statements, and as I
13 indicated, that's in violation of federal law.

14 Mr. Tolkoﬀ, what are the penalties that Mr.
15 Zheng faces if he's found guilty?

16 MR. TOLKOFF: Your Honor, the maximum penalty for
17 a violation of Title 18, United States Code Section 1001, is
18 5 years in prison, a \$250,000 fine, 3 years of supervised
19 release and a \$100 special assessment.

20 THE COURT: Okay. Mr. Zheng, you have a right
21 under the Constitution of the United States to remain
22 silent. Any statement made by you can be used against you
23 in Court, and you have the right not to have your own words
24 used against you.

25 You may consult with an attorney prior to

Judy Bond, CERT
Certified Federal Court Transcriber
judy@bondcourtreporting.com

1 questioning, and you may have an attorney present for
2 questioning. An attorney will be appointed without charge
3 if you cannot afford one. If you choose to make a statement
4 or answer questions without the assistance of an attorney,
5 you can stop making statements, you can stop answering
6 questions. I want to make it clear you're not prohibited
7 from making statements, but you need to remember that if you
8 do, your own words can be used against you.

9 Finally, if I should ask you questions today or at
10 a future hearing or if another judge should ask you
11 questions at a future hearing and you think the answer to
12 the question may incriminate you, you would have the right
13 not to answer that question.

14 Do you understand everything I've said about your
15 right to remain silent?

16 THE DEFENDANT: Yes.

17 THE COURT: You have the right to retain counsel,
18 to be represented by counsel and to have the assistance of
19 counsel at every critical stage of the proceedings against
20 you. That includes all the appearances in court, and that's
21 why Mr. Kelley is standing next to you this afternoon.

22 (The judge and the clerk confer.)

23 THE COURT: Mr. Zheng, I have a financial
24 affidavit that is signed.

25 Did you complete and sign this financial

Judy Bond, CERT
Certified Federal Court Transcriber
judy@bondcourtreporting.com

1 affidavit?

2 THE DEFENDANT: Yes.

3 THE COURT: Based on the information that's here,
4 I'm going to provisionally appoint a federal public defender
5 to represent you.

6 We're going to prepare for you for submission to
7 the Court in one week a supplemental financial filing so the
8 Court can make a more complete determination about whether
9 or not you qualify for appointment of counsel. Mr. Kelley
10 is going to represent you, provisionally, until a further
11 determination is made.

12 You have a right to a hearing to determine whether
13 you're going to be released on conditions of bail pending
14 trial or whether you're going to be detained. I'll take
15 that matter up in a moment.

16 And finally, you have a right to a preliminary
17 hearing at which the Government would have to present
18 evidence to establish that there's probable cause to believe
19 that the crime charged in the complaint was committed and
20 that you participated in committing it.

21 Mr. Tolkoﬀ, what is the Government's position on
22 release or detention?

23 MR. TOLKOFF: Your Honor, the Government is moving
24 for detention on the basis of flight. Under Title 18 United
25 States Code Section 3142(f)(2)(A), Mr. Zheng was literally

Judy Bond, CERT
Certified Federal Court Transcriber
judy@bondcourtreporting.com

1 on his way out of the country at the time he was caught. He
2 is a Chinese national who is in the United States on a J-1
3 Visa as a researcher for Beth Israel Hospital.

4 As the Court knows from having reviewed the
5 complaint affidavit in this matter, Beth Israel Hospital is
6 the victim in this case.

7 There is a high likelihood that Mr. Zheng's
8 sponsor for that visa will be rescinding its sponsorship, at
9 which point he will likely lose his visa and will certainly
10 become a person in this country without status. He will
11 also lose his job and have no means of income. So at that
12 point, Your Honor, he will, I believe, almost certainly be
13 deported and removed from the United States.

14 We are, of course, only four hours from the
15 nearest consulate in New York, and so although Mr. Zheng's
16 passport has been surrendered, I don't believe there's
17 anything that would prevent China from re-issuing a new one,
18 and Mr. Zheng could quite easily make a border crossing with
19 --

20 THE COURT: All right.

21 MR. TOLKOFF: -- that new document.

22 On that basis, we would ask for a hearing. I've
23 spoken with Mr. Kelley, and if the Court is available on
24 Monday, at the Court's availability either in the morning or
25 the afternoon, we would very much like to be heard.

Judy Bond, CERT
Certified Federal Court Transcriber
judy@bondcourtreporting.com

1 THE COURT: What does Monday look like?

2 Mr. Kelley, has the defendant been interviewed by
3 Pretrial Services?

4 MR. KELLEY: He has not, Judge. We had
5 anticipated doing that after this hearing.

6 THE COURT: Okay. Okay. Terrific.

7 What I'll do is I'll set it for Monday morning
8 then at 10:30 for detention hearing.

9 And Mr. Kelley, also for a preliminary hearing?

10 MR. KELLEY: At this time, yes, Judge.

11 THE COURT: Okay. So Monday, December 16, for a
12 detention hearing and a preliminary hearing.

13 Mr. Zheng, when we finish today, you are going to
14 be interviewed by Pretrial Services. They will prepare a
15 report. A copy of it goes to your lawyer, to the Government
16 and to the Court, and it helps the Court determine questions
17 on release and detention.

18 You will be held in the meantime and brought back
19 to court. After today you'll be brought back on Monday,
20 December 16, for a detention hearing and a preliminary
21 hearing.

22 Mr. Kelley, what I'd like to do is when we finish,
23 we'll print a copy of a supplemental financial affidavit for
24 you to be completed by the defendant. I'd like to get a
25 little bit more information just to make a final

Judy Bond, CERT
Certified Federal Court Transcriber
judy@bondcourtreporting.com

1 determination on appointment. But you're representing Mr.
2 Zheng going forward until I make a determination otherwise.

3 MR. KELLEY: Yes. Understood, Judge.

4 THE COURT: All right. Thank you.

5 Okay. I think that's all I have.

6 Mr. Tolloff, anything else?

7 MR. TOLKOFF: Not from the Government. Thank you,
8 Your Honor.

9 THE COURT: Mr. Kelley, anything else?

10 MR. KELLEY: No, Your Honor, not at this time.

11 THE COURT: Okay. We're in recess. Thank you.

12 THE CLERK: Court stands in recess.

13 (Court adjourned at 3:00:12 p.m.)

14

15

16

17

18

19

20

21

22

23

24

25

CERTIFICATION

I, Judy Bond, a court approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.


Judy Bond

January 26, 2020

Judy Bond, CERT
Certified Federal Court Transcriber
judy@bondcourtreporting.com